

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested

Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: August 17, 2023 (COW) (B of T) **Date:** September 7, 2023

TITLE: Highland Avenue Sewer Separation Project Design Engineering

SUBMITTED BY: David Gorman, PE, Assistant Director of Public Works *D.G.*

BACKGROUND/POLICY IMPLICATIONS:

Village-funded CIP project that includes installation of a separated storm sewer and roadway reconstruction.

FISCAL IMPACT/FUNDING SOURCE:

Total Contract Amount: \$70,600.00 (FY 2023)
Project Number: SS 22 01 Highland Avenue Sewer Separation Project
Account: Water/Sewer Fund (520.790.715.75420)

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: Village President and Board of Trustees
From: David Gorman, PE, Assistant Director of Public Works *DG*
Through: Carl Goldsmith, Director of Public Works *g*
Date: August 17, 2023
Subject: Highland Avenue Sewer Separation Project Design Engineering Contract

The Highland Avenue Sewer Separation Project is included in the approved 2023-2032 Capital Improvement Program. The design engineering had been budgeted at \$40,000 in 2022 but further review of the comprehensive sewer separation plan has pushed the timeframe for the design engineering to 2023-2024. There is \$360,000 budgeted in the CIP for 2024 construction, comprised of \$147,000 from the Construction Fund and \$213,000 of Rebuild Illinois Capital funding.

A Request for Proposal (RFP) was sent to Christopher B Burke Engineering as a follow up to the extensive modeling that they have been performing on the Village's combined sewers network. Their investigation has indicated that this project is highly cost-effective to remove a significant volume of storm water from the combined sewers, thereby reducing the risk of surcharging into basements and aboveground. The contract scope and fee for design were negotiated and agreed to by both parties.

The original scope foreseen in 2022 had been to install a 36" storm sewer and limit the restoration to the trench width. The expanded scope of the project will now include increasing the sewer diameter to 40"-48", and also to reconstruct all of the street pavement on Division Street between Highland Avenue and Chase Avenue, which is now warranted due to the poor condition of the pavement reflected by its Condition Index rating of 45. In addition, the unusually wide existing pavement of Chase Avenue between Division Street and South Broadway Avenue will be reduced to the standard 28 feet. The project is scheduled for design in 2023-2024 and construction in 2024.

Please present the attached agreement and resolution for the contract to the President and Board of Trustees for their review at their regular meeting on September 7, 2023. If approved, please return two original signed copies to Public Works for further processing.

R E S O L U T I O N
R _____ 23

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and Christopher B Burke Engineering, Ltd., regarding the Highland Avenue Sewer Separation Project as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 7th day of September, 2023.

Ayes; _____

Nays: _____

Absent: _____

Approved this 7th day of September, 2023.

Keith Giagnorio
Village President

ATTEST:

Elizabeth Brezinski
Village Clerk

**VILLAGE OF LOMBARD
CONTRACT**

CONTRACT DOCUMENT NUMBER SS-22-01

This agreement is made this 7th day of September, 2023, between and shall be binding upon the VILLAGE of Lombard, an Illinois municipal Corporation hereinafter referred to as the "VILLAGE" and Christopher B. Burke Engineering, Ltd., hereinafter referred to as the "ENGINEER" and its successors.

Witnessed, that in consideration of the mutual promises of the parties delineated in the contract documents, the ENGINEER agrees to perform the services, and the VILLAGE agrees to pay for the following services as set forth in the contract documents:

Design (Phases 1 and 2) Engineering Services for the Highland Avenue Separation Project

1. This contract shall embrace and include all the applicable contract documents listed below as if attached hereto or repeated herein:
 - a. VILLAGE’S Request for Qualifications for Short-List for Municipal Engineering Services dated October 9, 2021;
 - b. ENGINEER’S Project Proposal Dated August 10, 2023; and
 - c. Required Certificates and Signatures and Certificate of Insurance.
2. The VILLAGE agrees to pay, and the ENGINEER agrees to accept as full payment for the services which are the subject matter of this contract in accordance with the General Provisions.
3. This Contract represents the entire agreement between the parties and may not be modified without the written approval of both parties.

IN WITNESS WHEREOF, the Village of Lombard, Illinois by the Village President, and the ENGINEER have hereunto set their hands this 7th day of September, 2023.

If an individual or partnership, all individual names of each partner shall be signed or if a corporation, an officer duly authorized shall sign here:



Michael Kerr, President

Christopher B. Burke Engineering, Ltd.

Accepted this 18th day of August, 2023.

Individual or Partnership _____ Corporation X

By Position/Title

By Position/Title

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 7th day of September, 2023.

Keith Giagnorio
Village President

Attest: _____
Elizabeth Brezinski
Village Clerk

**VILLAGE OF LOMBARD
ENGINEER'S CERTIFICATION**

Michael Kerr, President, having been first duly sworn depose and states as follows:
(Officer or Owner of Company)

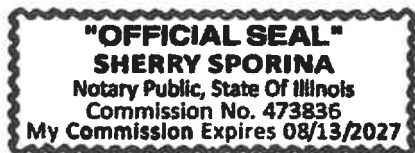
Christopher B. Burke Engineering, Ltd., having submitted a proposal for the Highland Avenue Sewer Separation Project to the Village of Lombard, hereby certifies that said ENGINEER:

- 1. has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A) (4).
- 2. is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:
 - a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approve Revenue Act; or
 - b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.
- 3. is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that All Employee Drivers
(Name of employee/driver or "all employee drivers")
is/are currently participating in a drug and alcohol testing program pursuant to the aforementioned rules.

By: 
Officer or Owner of Company named above

Subscribed and sworn to
before me this 18th
day of August, 2023.


Notary Public



**VILLAGE OF LOMBARD
CONTRACT**

CONTRACT DOCUMENT NUMBER SS-22-01

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Michael Kerr, President

Christopher B. Burke Engineering, Ltd.

Accepted this 18th day of August, 2023.

Individual or Partnership _____ Corporation X

By Position/Title

By Position/Title

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 7th day of September, 2023.

Keith Giagnorio
Village President

Attest: _____
Elizabeth Brezinski
Village Clerk

**VILLAGE OF LOMBARD
ENGINEER'S CERTIFICATION**

Michael Kerr, President, having been first duly sworn depose and states as follows:
(Officer or Owner of Company)

Christopher B. Burke Engineering, Ltd., having submitted a proposal for the Highland Avenue Sewer Separation Project to the Village of Lombard, hereby certifies that said ENGINEER:

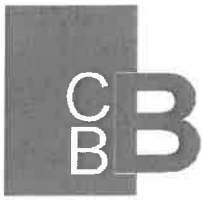
1. has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A) (4).
2. is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:
 - a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approve Revenue Act; or
 - b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.
3. is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that
All Employee Drivers
(Name of employee/driver or "all employee drivers")
 is/are currently participating in a drug and alcohol testing program pursuant to the aforementioned rules.

By: 
Officer or Owner of Company named above

Subscribed and sworn to
before me this 18th
day of August, 2023.


Notary Public





CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 W Higgins Road, Suite 600 Rosemont, Illinois 60018-4920 Tel (847) 823-0500 Fax (847) 823-0520

August 10, 2023

Village of Lombard
1051 S. Hammerschmidt Avenue
Lombard, IL 60148

Attention: Carl Goldsmith, Director of Public Works

Subject: Professional Engineering Services Proposal for Design Engineering
Highland Avenue Sewer Separation

Dear Mr. Goldsmith:

Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to present this proposal for professional design engineering services related to the Highland Avenue Sewer Separation project in the Village of Lombard. Included in this proposal are our Understanding of the Assignment, Scope of Work and Estimated Fee.

UNDERSTANDING OF THE ASSIGNMENT

We understand the Village would like CBBEL to provide design and construction engineering services. CBBEL will incorporate the proposed sewer separation referred to as Alternative 2A on the Combined Sewer Study updated date of March 2022. We understand on the project design the sewer diameters will be enlarged on Division Street and Chase Avenue from 36-inch storm sewer to a 42-inch and 48-inch storm sewer respectively in order to accommodate future storm sewers from Alternate 2C of the combined sewer system. These additional storm sewers will not be part of the design for this proposal. The project limits included in this proposal includes Chase Avenue from S. Broadway to Division Street, and Division Street from Chase Avenue to Highland Avenue.

The scope of this proposal includes utilizing the previously established conceptual project and completing additional topographic survey, utility coordination, final engineering design, preparation of construction plans and specifications, preparation of an Engineer's Opinion of Probable Cost, and permitting in accordance with IDOT guidelines.

We understand the Village would like to bid the project in early January/February 2024 with construction starting in March/April 2024 and will utilize Rebuild Illinois Funds.

SCOPE OF WORK

Task 1 – Topographic Survey: CBBEL will perform a topographic survey from R/W to R/W of, Chase Ave.(from S. Broadway to Division St., 400'LF±), & Division St. (from Chase St. to Highland Ave, 600'LF±), as per attached exhibit, for use in Design Engineering Services. The following scope items will be included in this task:

1. Horizontal Control: Utilizing state plane coordinates, CBBEL will recover existing primary control utilizing state of the art GPS equipment based on NGS Control Monumentation (NAD '83, Illinois East Zone 1201).
2. Vertical Control: CBBEL will recover establish benchmarks and verify elevations. This will be based on GPS observed NGS Control Monumentation (NAVD'88 vertical control datum)
3. CBBEL will recover the approximate existing right-of-way of the roadways within the project limits based on monumentation found in the field, plats of highways, subdivision plats and any other available information.
4. CBBEL will field locate all pavements, driveways, bike paths, curbs and gutters, pavement markings, signs, manholes, utility vaults, drainage structures, utilities, driveway culverts, crossroad culverts, etc. within the project limits.
5. CBBEL will field locate all trees of 6-inch caliper or greater within the survey limits (Tree Line only for heavily forested areas), and record tree size, location, and elevation on survey.
6. Office calculations and plotting field and record data.
7. CBBEL will survey cross sections along the project limits at 50' intervals, and at all other grade controlling features.
8. CBBEL will field-locate all aboveground utility infrastructure within the survey limits such as water, sanitary sewer, storm sewer, telephone, electric, cable and gas, etc. For each structure we will identify size, type, rim, and invert elevations.
9. CBBEL will coordinate with J.U.L.I.E. to retrieve atlas information for all applicable underground utilities including water main, gas, electric, cable, etc. CBBEL will compile all Utility Atlas information into the base map. Locations of existing utilities / obstructions / systems shown on the base map are the compilation of available utility plans provided by utility owners and J.U.L.I.E. Utility Coordination. All utilities / obstructions / systems may not be shown. Contractor shall be responsible for locating and protecting all underground utilities.
10. Office contouring of field data and one-foot contour intervals.
11. CBBEL will compile all of the above information onto one base map at 1"=20' scale that is representative of existing conditions for use as the base sheet for the design/construction of any public or private infrastructure subsequent to the findings of engineering analysis.

***NOTE: Boundary/Land Acquisition Survey, Plats of Easement, and Right-of-Way/Plat of Highway Scope of Services are not included in this proposal.**

Task 2 – J.U.L.I.E Coordination: CBBEL will coordinate with utility owners and with JULIE Utility Coordination to retrieve atlas information for all applicable underground utilities including water main, gas, electric, cable, etc. CBBEL will compile all Utility Atlas information into the base map. Locations of existing utilities /obstructions / systems shown on the base map are the compilation of available utility plans provided by utility owners and JULIE Utility Coordination. All utilities /obstructions / systems may not be shown. Contractor shall be responsible for locating and protecting all underground utilities /obstructions / systems whether or not shown on base map.

Task 3 – Field Reconnaissance: CBBEL Construction Staff will perform a Field Reconnaissance of the streets. The purpose of the Field Reconnaissance will be to determine the project limits and preliminary quantities. The results of the Field Reconnaissance will be used to prepare the plans, will be reviewed with the Public Works Department.

Task 4 – Geotechnical Investigation: Two (2) soil borings at a depth of 20 feet one on each Division Street and Chase Avenue will be obtained as part of the Geotechnical Exploration by TSC for compliance with the Clean Construction Demolition Debris (CCDD). The report will give complete pavement and base surface thickness as well as subgrade description and laboratory test dates. Comments will also be made concerning proposed pavement overlay and/or maintenance.

We recommend that the CCDD/USFO facility destination to be used for a particular project be contacted to verify the analytical parameters proposed will be sufficient.

The objectives of the Study are to determine whether the associated laboratory analysis provides a basis for TSC to sign IEPA Form LPC-663, Unincorporated Soil Certification by a Licensed Professional Engineer.

A summary report will be prepared which describes the sampling procedures followed and present results of the analytical laboratory testing. If all analytical results meet their respective MACs, Form LPC-663 will be filled out and signed by a Licensed Professional Engineer or Geologist. The report will be included.

Task 5 – Rebuild Illinois Funds: CBBEL will complete calculations required for the pavement design study in accordance with the IDOT Bureau of Local Roads Manual Section 46-4 and IDOT Circular Letter 2020-11, which requires all design overlay extension projects to have a design life greater than 13 years.

Task 6 – Pre-Final Plans (90%), Specifications and Estimate: CBBEL will prepare the pre-final engineering plans, specifications, estimate of time, status of utilities to be adjusted and an estimate of construction cost. The plans will be prepared in accordance with Village and IDOT design criteria.

The following sheets and associated staff hours will be required:

Sheet	# of Sheets	Hours per Sheet	Hours
Title Sheet	1	10	10
General Notes/Summary of Quantities	1	16	16
Alignment, Ties and Benchmark Sheets (1"=50')	1	12	12
Existing and Proposed Typical Sections-Chase Avenue	1	10	10
Existing and Proposed Typical Sections-Division Street	1	10	10
Existing Conditions and Removal Plan-Chase Avenue	1	10	10
Existing Conditions and Removal Plan-Division Street	1	10	10
Roadway Plan and Profile – Chase Avenue (1"=20')	1	12	12
Roadway Plan and Profile – Division Street (1"=20')	1	12	12
Drainage Plan and Profile – Chase Avenue (1"=20')	1	12	12
Drainage Plan and Profile – Division Street(1"=20')	1	12	12
Construction Details	1	10	10
Erosion Control Plan (1"=50')	2	10	20
Erosion Control Details	2	10	20
Cross Sections – Chase Avenue	2	10	20
Cross Sections – Division Street	2	10	20
Specifications	--	--	20
Cost Estimate/Quantities	--	--	30
TOTAL	20		266

All special contract and special provisions will be prepared in IDOT standard format.

Task 7 – Update of Sewer Model: We will use the completed design plans to update the XP-SWMM model for the watershed so that it is current and ready to be used for the design of future sewer separation stages. The alignment, size, and elevation of the new storm sewers will be updated within the model.

Task 8 – Bid Documents (100%): CBBEL will finalize the plans, specifications, and estimate based on any comments from the Village. A final estimate of cost and estimate of required working days will also be submitted.

Task 9 – Permitting Memorandum: We have assumed there are no special management areas, no increase in impervious area, and that the improvements would be considered roadway maintenance work. Therefore a DuPage County Stormwater Certification will not be required. We will prepare a summary memorandum for the project file which confirms these assumptions. If the project assumptions change and permitting becomes necessary, a separate proposal will be prepared.

Task 10 – Project Coordination and Public Meetings: CBBEL will coordinate with the Village and project stakeholders throughout the design and permitting of the project. In addition to phone conversations and written and electronic coordination, it is anticipated that two (2) project coordination meetings will be held with Village Staff.

ESTIMATE OF FEE

We have determined the following fees for each of the tasks described in this proposal.

Task 1 – Topographic Survey	\$ 6,930
Task 2 – J.U.L.I.E Coordination	\$ 1,520
Task 3 – Field Reconnaissance	\$ 3,500
Task 4 – Geotechnical Investigation	\$ 8,900
Task 5 – Rebuild Illinois Funds	\$ 750
Task 6 – Pre-Final Plans (90%), Specifications, and Estimate	\$41,000
Task 7 – Update of Sewer Model	\$ 1,500
Task 8 – Bid Documents (100%)	\$ 4,000
Task 9 – Permitting Memorandum	\$ 500
Task 10 – Project Coordination and Public Meetings	\$ 2,000
TOTAL FEE NOT TO EXCEED	\$70,600

We will bill you at the hourly rates specified on the attached Schedule of Charges. We will establish our contract in accordance with the attached General Term and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. Direct costs for blueprints, photocopying, mailing, mileage, overnight delivery, messenger services and report binding are included in the Fee Estimate. Please note that meetings and additional services performed by CBBEL that are not included as part of this proposal will be billed on a time and materials basis and at the attached hourly rates.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Michael E. Kerr, PE
President

THIS PROPOSAL, SCHEDULE OF CHARGES, AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR THE VILLAGE OF LOMBARD:

BY: _____

TITLE: _____

DATE: _____

LMF/mlj
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**CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY 2023**

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Engineer VI	265
Engineer V	220
Engineer IV	180
Engineer III	160
Engineer I/II	135
Survey V	240
Survey IV	220
Survey III	190
Survey II	160
Survey I	120
Engineering Technician V	210
Engineering Technician IV	175
Engineering Technician III	125
Engineering Technician I/II	85
CAD Manager	200
CAD II	145
GIS Specialist III	165
Landscape Architect	190
Landscape Designer I/II	110
Environmental Resource Specialist V	225
Environmental Resource Specialist IV	180
Environmental Resource Specialist III	145
Environmental Resource Specialist I/II	100
Environmental Resource Technician	130
Administrative	110
Engineering Intern	70
Information Technician III	150
Information Technician I/II	120
 <u>Direct Costs</u>	
Outside Copies, Blueprints, Messenger, Delivery Services, Mileage	Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2023.

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void & without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are

specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the **Illinois** Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that **Illinois** law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the

Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.